IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

RANDOLPH S. BLOOM, Petitioner, v. HON. STEPHEN F. McCARVILLE, Judge of the Superior Court of the State of Arizona, in and for the County of Pinal, Respondent, and THE STATE OF ARIZONA, Real Party in Interest.	2 CA-SA 2007-0114 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

SPECIAL ACTION PROCEEDING

Pinal County Cause No. CR2002-01262

JURISDICTION ACCEPTED; RELIEF GRANTED

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H O W A R D, Presiding Judge.

¶1 In this special action, petitioner Randolph Bloom challenges the respondent judge's orders denying Bloom's motion to dismiss the underlying criminal charge for violation of his speedy trial rights under Rule 8, Ariz. R. Crim. P., and his motion for reconsideration of the respondent's denial of the motion to dismiss. Typically this court will not accept jurisdiction of special action petitions seeking review of the denial of a motion to dismiss criminal charges. *See Hennessey v. Superior Court*, 190 Ariz. 298, 299, 947 P.2d 872, 873 (App. 1997). It is appropriate for us to do so, however, when the motion is based on an alleged speedy trial violation because addressing the issue before trial "promotes judicial economy." *State v. Tucker*, 133 Ariz. 304, 306, 651 P.2d 359, 361 (1982); *see also Humble v. Superior Court*, 179 Ariz. 409, 411, 880 P.2d 629, 631 (App. 1993). We therefore accept jurisdiction of this special action and, because we find the respondent judge abused his discretion, *see* Rule 3(c), Ariz. R. P. Spec. Actions, grant relief.

¶2 Based on the scant record available to us and the undisputed facts, the following is a chronology of the events that gave rise to this special action. Sometime during the summer of 2002, while serving a prison sentence that had been imposed in June 1982, after he was convicted of aggravated assault and kidnapping, Bloom allegedly assaulted a prison guard at the Arizona Department of Corrections (ADOC) by pouring "fluid" on him. Bloom was charged with felony assault on October 9, 2002 and attended his November 1

arraignment. At some point, the state filed a petition pursuant to Arizona's Sexually Violent Persons Act (the SVP Act), A.R.S. §§ 36-3701 through 36-3717, seeking a determination that Bloom was a sexually violent person pursuant to § 36-3701(7) and an order committing him to the custody of the Arizona Department of Health Services (ADHS) for treatment under the supervision of the superintendent of the Arizona State Hospital (ASH) pursuant to § 36-3707(B)(1). On November 21, 2002, the Maricopa County Superior Court found probable cause to believe Bloom was a sexually violent person and ordered ADOC to transport him to the Arizona Community Protection and Treatment Center (ACPTC), which is a unit of ASH. *See State ex rel. Ariz. Dep't of Health Servs. v. Gottsfield*, 213 Ariz. 583, ¶ 8, 146 P.3d 574, 576 (App. 2006).

¶3 When Bloom completed his sentence on December 2, 2002, he was released from ADOC custody and transported to ACPTC. Two days later, on December 4, the trial court in the underlying criminal proceeding issued an order to transport him for a pretrial conference scheduled for December 16. When Bloom failed to appear on that date, the court issued a warrant for his arrest.

¶4 Bloom contends that, after a year of litigation, he was found to be a sexually violent person and was committed to ASH for treatment. In early January 2007, he was released from ASH and appeared before the trial court pursuant to the warrant on the pending assault charge. In early April, Bloom filed a motion to dismiss the assault charge

with prejudice on the ground that his speedy trial rights under Rule 8.2, Ariz. R. Crim. P.,[1] had been violated. The respondent judge denied the motion, as well as Bloom's motion for reconsideration. This special action followed.

¶5 In denying the motion to dismiss, the respondent judge found that, at Bloom's pretrial conference, the respondent judge and the state had been informed of Bloom's release from ADOC's custody but "[a]t no time did the defendant or his counsel inform the Court and State that in fact he had been transferred to the Arizona State Hospital." In denying Bloom's motion for reconsideration, the respondent judge elaborated on the basis for his ruling. First he reviewed the chronology of the case, noting that, at the pretrial conference on December 16, 2002, the public defender representing Bloom had had no information regarding Bloom's whereabouts. Next, the respondent judge expressly rejected Bloom's argument that the time limits of Rule 8.2 had been violated, finding this court's decision in *State ex rel. Berning v. Davis*, 191 Ariz. 189, 953 P.2d 933 (App. 1997), was "dispositive" of Bloom's argument. The respondent added, "In that case, the Court ruled that the State had no duty to search for an incarcerated defendant since the defendant had not requested a speedy disposition."

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[1]The version of Rule 8.2 that appears to apply to Bloom's charge was the version that existed before the May 31, 2002 amendment. *See* 202 Ariz. XLII (amending Rule 8.2, effective December 1, 2002, and "applicable to all criminal cases in which the indictment, information or complaint is filed on or after December 1, 2002"). That version required that the defendant "be tried . . . within 150 days of the arrest or service of summons . . . except for those excluded periods set forth in Rule 8.4. . ."

¶6 The respondent judge erred by relying on *Bernin*g and thereby abused his discretion. *See* Ariz. R. P. Spec. Actions 3(c); *see also Twin City Fire Ins. Co. v. Burke*, 204 Ariz. 251, ¶ 10, 63 P.3d 282, 285 (2003) (a judge abuses discretion by committing an "'error of law'"), *quoting Grant v. Ariz. Pub. Serv. Co.*, 133 Ariz. 434, 456, 652 P.2d 507, 529 (1982). In *Berning*, this court found that the speedy trial rights of the defendant had not been violated because the defendant, first as a jail inmate and then as a prison inmate, had failed to request a final disposition of outstanding charges pursuant to Rule 8.3(b)(1). *Berning*, 191 Ariz. at 190-91, 953 P.2d at 934-35. Consequently, we concluded, the time limits of Rule 8.3 had not begun to run. But *Berning* does not apply because Rule 8.3 is inapplicable here.

¶7 As its title suggests, Rule 8.3 expressly applies to the "[r]ight to speedy trial of persons in prison within or without the state." As stated above, Bloom was released from ADOC on December 2, 2002. Although he was apparently in ADOC custody between November 1, the date of his arraignment, and December 2, by the time Bloom's rights under Rule 8 were threatened, he was no longer "imprisoned in this state." Ariz. R. Crim. P. 8.3(b)(1). Rather, at that point, Bloom was in the custody of ADHS and being treated at ACPTC, where he apparently remained until January 2007.

¶8 Bloom's detention and commitment for treatment under the SVP Act do not constitute imprisonment. Repeatedly, the courts of this state have found that SVP proceedings are civil in nature and that the purpose of the SVP Act is not to punish persons

adjudicated thereunder but to treat them and to protect the public by confining them for treatment until they are no longer a danger to others. *See, e.g., In re Leon G.*, 204 Ariz. 15, ¶¶ 5-6, 59 P.3d 779, 782-83 (2002); *Gottsfield*, 213 Ariz. 583, ¶ 7, 146 P.3d at 576; *In re Commitment of Frankovitch*, 211 Ariz. 370, ¶ 8, 121 P.3d 1240, 1243 (App. 2005); *In re Commitment of Conn*, 207 Ariz. 257, ¶ 7, 85 P.3d 474, 476 (App. 2004); *State v. Hoggatt*, 199 Ariz. 440, ¶ 18, 18 P.3d 1239, 1244 (App. 2001); *State ex rel. Romley v. Superior Court*, 198 Ariz. 164, ¶ 6, 7 P.3d 970, 972 (App. 2000); *Martin v. Reinstein*, 195 Ariz. 293, ¶ 2, 987 P.2d 779, 785 (App. 1999); *see also Kansas v. Crane*, 534 U.S. 407, 412-13 (2002); *Seling v. Young*, 531 U.S. 250, 260-61 (2001); *Kansas v. Hendricks*, 521 U.S. 346, 369 (1997). The provisions of the SVP Act itself are consistent with these principles. *See, e.g.*, § 36-3704(B) (rules of civil procedure apply to SVP proceedings); § 36-3707(B)(1) (providing disposition alternatives for person found sexually violent, including commitment of person "to the custody of [ADHS] for placement in a licensed facility under the supervision of the superintendent of [ASH] . . . [for] care, supervision or treatment until the person's mental disorder has so changed that the person would not be a threat to public safety if the person was conditionally released to a less restrictive alternative or was unconditionally discharged").[2]

[2]We find it significant that, when § 36-3707(B)(1) (then § 13-4606(B)) was amended in 1996, the legislature substituted ADHS for ADOC and deleted "operated by the state department of corrections" at the end of the first sentence. 1996 Ariz. Sess. Laws, ch. 315, § 10. Of equal or greater significance was the legislature's subsequent transfer of the entire SVP Act "from title 13, which deals generally with criminal law, to title 36, chapter 37,

¶9 Additionally, by its very terms Rule 8.3 does not apply here. In interpreting rules of procedure, we employ the same principles that we apply in interpreting statutes. *Kim v. Mansoori*, 214 Ariz. 457, ¶ 7, 153 P.3d 1086, 1089 (App. 2007). Therefore, we interpret a rule based on the plain meaning of its terms. *See Bolding v. Hantman*, 214 Ariz. 96, ¶ 6, 148 P.3d 1169, 1171 (App. 2006). Neither ACPTC nor ASH falls within the definition of a prison: "A state or federal facility of confinement for convicted criminals, esp[ecially] felons." *Black's Law Dictionary* 1232 (8th ed. 2004). *cf. Escalanti v. Superior Court*, 165 Ariz. 385, 387, 799 P.2d 5, 7 (App. 1990) (addressing meaning of terms "penal or correctional institution" contained in speedy trial provisions of Interstate Agreement on Detainers; finding term "penal institution" a "'generic term to describe all places of confinement for those convicted of crime such as jails, prisons, and houses of correction,'" *quoting Black's Law Dictionary* 1020 (5th ed. 1979), and finding "correctional institution" a "'generic term describing prisons, jails, reformatories and other places of correction and detention,'" *quoting id.* at 311).

¶10 Although we conclude that Rule 8.3 does not apply here, Rule 8.2 does. And it is clear that the deadlines set forth in Rule 8.2 had expired long before Bloom was released from ASH and the custody of ADHS in January 2007. The state has never directly argued, nor did the respondent judge find, that the period during which Bloom was in the

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article 1, which deals with mental health. *See* . . . 1998 Ariz. Sess. Laws 814." *Martin*, 195 Ariz. 293, n.1, 987 P.2d at 785 n.1.

custody of ADHS may be excluded under Rule 8.4. In any event, none of the excluded periods set forth in Rule 8.4 applies here.

¶11 To the extent the state is suggesting, or the respondent judge believed, Rule 8.1(d) required Bloom to inform the court of the impending expiration of time limits, both notions are mistaken. In *State v. Tucker*, 133 Ariz. 304, 308 n.5, 651 P.2d 359, 363 n.5 (1982), our supreme court stated that this subsection was added to the rule in response to *State ex rel. Berger v. Superior Court*, 111 Ariz. 335, 529 P.2d 686 (1974). The change was intended "'to equalize the burden of speedy trial compliance between the defense and the prosecution.'" *Tucker*, 133 Ariz. at 308 n.5, 651 P.2d at 363 n.5, *quoting* Ariz. R. Crim. P. 8.1(d) cmt. The court stated the provision was intended for those cases that were delayed by the litigation of pretrial motions that could raise a question about whether the time was excluded under Rule 8.4. But, "when there are no intervening delays between the event that triggers Rule 8.2 and the expiration of the Rule 8.2 time limit, the accused need not demand compliance with the time limits." *Tucker*, 133 Ariz. at 308 n.5, 651 P.2d at 363 n.5. Thus, the court concluded, when, as here, "nothing interferes with the running of the Rule 8.2 period, the accused should not need to visit the courthouse every so often to remind the court to check the countdown." *Id.; see also Aguilar v. Superior Court*, 144 Ariz. 504, 507, 698 P.2d 749, 752 (App. 1985) (concluding *Tucker* "authoritatively sets forth the supreme court's view that Rule 8.1(d) does not apply" in absence of intervening delays caused by motions or hearings).

¶12 Bloom's speedy trial rights under Rule 8.2 were violated. The question remaining is whether the underlying charge should be dismissed with or without prejudice. *See* Ariz. R. Crim. P. 8.6. Generally, that is for the trial court to determine in the exercise of its discretion, *State ex rel. DeConcini v. Superior Court*, 25 Ariz. App. 173, 175, 541 P.2d 964, 966 (1975), after it considers what are essentially the same factors that are relevant in determining the appropriate remedy for a violation of a defendant's constitutional rights to a speedy trial, *see Humble*, 179 Ariz. at 415-16, 880 P.2d at 635-36. Among these factors are the length of the delay, prejudice to the defendant, "whether, in due course, the defendant asserted his right to a speedy trial," and whether the state exercised due diligence in trying to find the defendant. *Id*. at 416, 880 P.2d at 636. We recognize that extensive delays may be presumptively prejudicial. *See id*. But the respondent judge has not had the opportunity to consider whether the delay of more than four years under the circumstances of this case warrants a dismissal of the charge with or without prejudice under Rule 8.6. Therefore, although we find the respondent judge abused his discretion by denying Bloom's motion based on Rule 8.3 and *Berning*, we remand this matter to the respondent judge with directions to determine the appropriate remedy for the violation of Bloom's speedy trial rights.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge